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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/557,418	04/21/2000	Bernard Trevor Matthews	FJC-102US	6763

7590

07.31.2002

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EXAMINER

CORBIN, ARTHUR L

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 07/31/2002

12

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09557,418

Applicant(s)

MATTHEWS ET AL

Examiner

ARTHUR L CORBIN

Group Art Unit

1761

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- ☒ Responsive to communication(s) filed on 4-30-02
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-5, 7-24, 26, 28-32, 34-47 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-5, 7, 10-24, 26, 28, 31, 32 & 34-47 is/are rejected.
- ☒ Claim(s) 8, 9, 29 & 30 is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

## Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some\* ☐ None of the:
  - ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
  - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

Office Action Summary

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1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-5, 7, 10-24, 26, 28, 31, 32 and 34-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swartz (4,362,750).

Applicant's referred to the reasoning set forth in paragraph no. 5, Paper No. 9.

3. Claims 44-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swartz as applied to claims 1-5, 7, 10-24, 26, 28, 31, 32 and 34-43 above, and further in view of German patent 2,203,582 (Hoken<sup>2</sup>~~ster~~).

It would have been obvious to include a phosphate in the sausage emulsion of Swartz since it is conventional to include a milk product and a phosphate in a sausage emulsion used to prepare a sausage product, as evidenced by Hoken<sup>2</sup>~~ster~~ (Figures 4 and 6).

4. Applicant's arguments filed April 30, 2002 have been fully considered but they are not persuasive. Applicant's contention that Swartz does not disclose addition of a fermented milk product to a cooked sausage is without merit since applicant's claims are not so limited. In fact, applicant's process claims disclose first adding the fermented milk product and then cooking. Applicant's claimed product is a cooked sausage but is not dependent on any particular sequence of steps.

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Although Swartz does not specifically disclose applicant's claimed amount of yogurt <sup>6.5</sup> the claimed sausage pH, as applicant argues, such parameters are not deemed to be critical in the absence of unexpected results.

5. Claims 8, 9, 29 and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur Corbin whose telephone number is 703-308-3850. The examiner can normally be reached on Tuesday to Friday from 10 AM to 7:30 PM, and alternate Mondays.

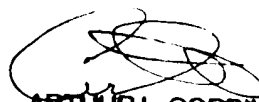
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (703) 308-3929. The fax phone number for the organization where this application or proceeding is assigned is 872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-0661.

Corbin:mv

July 25, 2002

  
ARTHUR L. CORBIN  
PRIMARY EXAMINER  
7-29-02